

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION, Inc.,

Plaintiff,

v.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, and
EXXONMOBIL PIPELINE COMPANY,

Defendants.

Case 1:16-cv-11950 (MLW)

DEFENDANTS' ASSENTED-TO MOTION FOR LEAVE TO FILE A REPLY
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants Exxon Mobil Corporation, ExxonMobil Oil Corporation, and ExxonMobil Pipeline Company (collectively “Defendants” or “ExxonMobil”), by and through their undersigned attorneys, hereby respectfully move this Court for leave to file the attached assented-to Reply Memorandum of Law in Support of Defendants’ Motion to Dismiss (“Reply”).

The attached proposed ten-page Reply addresses discrete legal issues regarding the Clean Water Act (“CWA”) and Resource Conservation and Recovery Act (“RCRA”) claims raised in the Conservation Law Foundation’s (“CLF”) Memorandum of Law in Support of Its Opposition to Defendants’ Motion to Dismiss (“Opposition”). The proposed Reply demonstrates that the Opposition (i) relies on inapplicable and unhelpful case law, (ii) leaves unaddressed numerous cases and specific statutory regimes cited by ExxonMobil in its opening brief, (iii) erroneously relies on statements in the Stormwater Pollution Prevention Plan at issue that, pursuant to Environmental Protection Agency (“EPA”) guidance, are altogether unrelated to climate change

and distinct from Defendants' Spill Prevention, Control, and Countermeasures plan, and (iv) disregards the valid scope of a citizen suit brought pursuant to the CWA. The proposed Reply explains why, despite CLF's Opposition, Plaintiff still fails to (a) sufficiently plead standing, (b) present a cognizable RCRA claim premised on imminent harm (Claim 1), (c) justify a collateral attack on a National Pollutant Discharge Elimination System ("NPDES") permit issued by the EPA that does not address alleged climate change impacts (CWA Claims 5–12), and (d) contest that the non-climate change claims are barred by the NPDES permit shield (CWA Claims 2–4), or are precluded because they are either wholly past violations (CWA Claims 3 and 13) or not connected in any way to effluent discharge associated with the Everett Terminal (CWA Claim 14).

A reply is particularly appropriate here because CLF sought to rely on eight declarations in its Opposition. Absent the ability to submit a reply brief, ExxonMobil will not have any opportunity to explain why the declarations do not rectify Plaintiff's lack of standing or the fatal deficiencies in its legal claims.

For the reasons set forth above, Defendants respectfully request that the Court grant leave for Defendants to file the attached Reply.

Respectfully submitted this 30th day of December, 2016,

By their attorneys,

/s/ Theodore V. Wells, Jr.

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I hereby certify that the parties have conferred with respect to the relief requested in this motion and plaintiff Conservation Law Foundation has assented to defendants' request to file a ten-page reply in support of their motion to dismiss.

/s/ Deborah E. Barnard

Deborah E. Barnard

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with Local Rule 5.2(b), this motion was filed through the ECF system on December 30, 2016 and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Deborah E. Barnard

Deborah E. Barnard